APPEAL NO. 030300
FILED MARCH 13, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on January 6, 2003. The hearing officer resolved the disputed issue by concluding that the appellant's (claimant) compensable injury of _____, does not include left sided radiculopathy and does not include a meniscus tear of the left knee. The claimant appeals the extent-of-injury determination, asserting that it is so against the great weight and preponderance of the evidence as to be manifestly unjust. In its response, the respondent (carrier) argues that the hearing officer's determination is supported by the evidence.

DECISION

Affirmed.

The claimant sustained a compensable low back injury on _____. He complained of pain radiating down his left leg, and was variously diagnosed with chronic lumbar strain, sciatica, and lumbago. He claimed to have weakness in his left leg which made the leg buckle, causing him to fall numerous times. He has been diagnosed as having a left knee meniscus tear and a dislocated left patella. Several doctors, including two different Texas Workers' Compensation Commission-appointed designated doctors (appointed to determine whether the claimant was at maximum medical improvement and, if so, what his impairment rating was), opined that the claimant's sciatica was related to his lumbar injury and that the leg giving way was because of pain from the lumbosacral spine, and therefore related to the compensable injury. There was also evidence that an MRI of the lumbar spine taken shortly after the injury was negative, and that the claimant was released from treatment on November 2, 2001, by the original treating doctor because he had not been compliant with treatment. In addition, a nerve conduction study and electromyography done by the first designated doctor showed no evidence of lumbosacral radiculopathy on the left side or of peripheral neuropathy in the left lower extremity.

The question of extent of injury is one of fact. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer did not find

the claimant to be credible, and stated that the medical evidence presented by the claimant was conclusory, and that the doctors who wrote about the claimant's condition did not explain, within reasonable medical probability, how the claimant's current medical condition is included in the compensable injury. The hearing officer specifically found that the medical evidence did not prove that the claimant sustained a "follow-on" injury, with regard to the left knee, noting that the evidence was not persuasive in proving the left knee injury was directly related to and flowed naturally from the compensable injury. As an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). The opinions of the doctors were clearly based upon the history provided by the claimant. The history of an incident given by a patient to a doctor is not proof of the truth of the patient's statements to the doctor. Texas Employers' Insurance Association v. Butler, 483 S.W.2d 530, 534 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). It was the province of the hearing officer to determine what weight to give to the medical evidence as well as to the testimony of the claimant.

An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We find the evidence in this case sufficient to support the hearing officer's determination.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Chris Cowan
Appeals Judge